IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2007

CORAM:

The HONOURABLE MR.JUSTICE V. DHANAPALAN

W.P.No.3985 of 2006

Dr.Abdul Guffoor I.T.I.,
rep. by its Correspondent,
Vikravandi, Villupuram District,
PIN : 605 652 ... Petitioner

vs.

1. The Government of India,
Directorate General of Employment & Training,
Ministry of Labour,
Sharam Shakti Bhavan,
Rafi Marg, New Delhi 110 001.

2. The Commissioner,
Employment & Training Department,
Guindy, Chennai 600 032. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondents to issue the National Trade Certificate for the 1995 and 1996 batch of students who undertook their exams in July 1997 and July 1998, respectively, in terms of the annexure enclosed in this writ petition for the Trade of Fitter, as per the representation dated 08.11.2004.

For Petitioner : Mrs.G.Thilakavathi

For Respondents : Mr.K.Balachandran
Addl. Central Govt. Standing Counsel for R1

Mr.A.Edwin Prabakar
Government Advocate for R2

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O R D E R

This writ petition has been filed for a direction to the respondents to issue the National Trade Certificate for the 1995 and 1996 batch of students, who undertook their examinations in July 1997 and July 1998, respectively, in terms of the annexure enclosed in this writ petition for the Trade of Fitter, as per the representation

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dated 08.11.2004.

2. The facts of the case, in brief are, as under:

(i) The petitioner, a society registered under the Societies Registration Act was granted recognition in 1985, for imparting trade of Fitter and Plumber in 1+1 units with a strength of 20 students each. The first batch of students admitted in 1985, undertook their examination in 1987 and thereupon, approval for additional units was sought during the years 1991 and 1992 in 1 + 1 units, with a strength of 20 students each.

(ii) On 15.11.1997, the Standing Committee caused inspection for the additional units which commenced during the years 1991 and 1992 and the Director of Employment & Training passed suitable orders forthwith. Thereafter, the State Level Body, on the basis of the recommendations made by it through the Inspection Committee for the additional units commencing from 1991 and 1992, permitted conduct of examinations for the batch of students, continuously from 1992 onwards in 2 + 2 units, i.e. 40 + 40 students in all the four units of Fitter. Since issuance of orders on 04.11.1999, restricted the affiliation with effect from August 1997, the authorities refused to publish the results for the students of the 1995-1997 batch and 1996-1998 batch, stating that only from August 1997, the Management is entitled to admit 40+40 students and therefore published the results to only one batch of students, i.e. 20 nos. and refused to publish the results for the next batch of students and grant the original National Trade Certificates.

(iii) Despite periodical representations made by the petitioner management to the respondents, no consideration has been made in the manner known to law. Hence, the petitioner, left with no other alternative, has approached this Court with the aforesaid relief.

3. In the counter affidavit, the respondents have stated that as per norms, if only one unit of a trade of 2 years duration is affiliated to NCVT, then the admission of trainees to the trades/unit of two years duration would be made in alternate year and not in successive year and therefore, the institute can either admit 2 batches of trainees in alternate year and not in successive year or,alternatively it is also possible for the Institute to admit one batch each in the first year and second year, so that at any point of time during the training course, number of trainees should not exceed the maximum permissible strength of 38 trainees @ 19 trainees per unit.

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4. The respondents have further stated that admission can be made in any of the following manners:

(i) if the institute admits two units in the first year itself and nil in the second year, the maximum number of trainees permitted to be admitted in the first year would be restricted to '38' and nil in the second year.

(ii) if the institute admits trainees for nil units in the first year and two units in second year, the maximum number of trainees permitted to be admitted in first year would be restricted to nil and 38 in the second year.

(iii) if the institute admits trainees for one unit in first and one unit in second year, the maximum number of trainees permitted to be admitted in the first year would be restricted to 19 and 19 in the second year.

5. With regard to the issuance of certificate to the Trainees, the respondents have stated that in order to maintain transparency in the system of issuing certificate and to ensure that the certificates are issued only to those trainees who have been admitted in the affiliated trades/units of the institute, a proposal regarding change in mode of issuance of certificates was discussed as an Agenda item No.6 of the meeting of Sub-Committee of NCVT dealing with affiliation held on 07.02.1996. The Sub-Committee of NCVT recommended that henceforth, the blank certificate without facsimile signature of the Secretary, NCVT, be issued to the State Director as per their demand and the State Director, after filling the entries and signing the certificate in ink, would send these certificates back to DGE & THQ for obtaining the facsimile signature of Secretary, NCVT. The respondents have also stated in the counter, the norms prescribed by NCVT for issuance of certificates.

6. According to the respondents, the trainees admitted during the academic session 1995-1997 and 1996-1998 against 2 units of affiliated trade Fitter were beyond the sanctioned strength of 38 and therefore, the excess trainees admitted in the unaffiliated trade/unit of Fitter are not eligible to appear in the All India Trade Test, because as per the trade test procedure for the Craftsmen Training Scheme given in the Appendix VIII of Training Manual for ITI/ITCs, Trainees of the affiliated trades/units of an Industrial Training Institute/Centre who have completed the prescribed period of training depending upon the trades are only eligible in the All India Trade Test conducted under the aegis of NCVT for award of National Trade Certificate. It is the responsibility of the State Director to ensure that eligible trainees of only affiliated trades/units are allowed to appear in AITT. However, as per the provisions contained in the Training Manual, the trainees of unaffiliated trades/units be trade tested and awarded Certificate under SCVT at State level and

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not under NCVT for award of NTC. The respondents have submitted that the above view has already been upheld by the High Court of Kerala and High Court of Madras in a number of writ petitions and prayed for dismissal of the writ petition, since the petitioner is not entitled to receive National Trade Certificate awarded by NCVT at National level.

7. Heard Mrs.G.Thilakavathy, the learned counsel for the petitioner, Mr.K.Balachandran, the learned Additional Central Government Standing Counsel for the first respondent and Mr.A.Edwin Prabakar, the learned Government Advocate for the second respondent.

8. The learned counsel for the petitioner has submitted that the petitioner institute was permitted to undertake the examinations continuously from 1991-1992 onwards, but after the passing of the order dated 04.11.1999, the authorities refused to publish the results for the students of the 1995-1997 batch and 1996-1998 batch, stating that only from August 1997, the Management is entitled to admit 40 + 40 students and therefore, published the results to only one batch of students and refused to publish the results for the next batch of students. Placing reliance on the order of this Court in W.P.No.21113 of 2006, in and by which the original National Trade Certificates for the 1995-1997 batch of students was ordered to be issued, the learned counsel pleaded for the petitioner that the respondents may be directed to issue National Trade Certificates for the 1995 and 1996 batch of students, as per the petitioner's representation dated 08.11.2004.

9. On the other hand, the learned counsel for the respondents submitted that the institute can either admit 2 batches of trainees in alternate year and not in successive year or alternatively it is also possible for the Institute to admit one batch each in the first year and second year, so that at any point of time during the training course, number of trainees should not exceed the maximum permissible strength of 38 trainees @ 19 trainees per unit. He contended that the trainees admitted to unaffiliated units of trade Fitter for the academic session 1995-1997 and 1996-1998 are not eligible to receive National Trade Certificate, however, they are entitled to receive the certificate under SCVT at State level.

10. From the averments made in the counter affidavit of the first respondent, it is seen that there is no dispute with regard to two units of the trades of Fitter and Plumber, admitted for the batch 1991 and 1992, since those two units were originally granted permanent affiliation with effect from 1991 and 1992 itself. The actual dispute is with regard to the two additional units viz., the third and fourth units in both the trades.

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11. But, the following events discredit the objections taken by the first respondent:

(a) The permanent affiliation for one unit of Fitter trade was granted by the first respondent by its communication dated 05.02.1998 with effect from August 1991. Based on Departmental Inspection Report dated 10.06.1992, one additional unit of Fitter was also given permanent affiliation with effect from August 1992. In the Sub-Committee dated 24.02.1998, only 2 units have been shown in Fitter Trade as affiliated, instead of 4 units. Again, one Standing Committee Inspection was conducted on 13.06.1997 for 2 additional units of Fitter Trade and they have been placed in the Sub-Committee on 30.06.1998 and declared as "Under Consideration".

(b) Thereafter, in the Sub-Committee held on 04.11.1999, affiliation was granted for 2 additional units with effect from August 1997. But, based on the instructions issued in the sub-committee dated 30.06.1998, the trainees of Fitter Trade kept under consideration were allowed to appear for All India Trade Test held in July 1998.

(c) The Director of Employment & Training, Chennai has also addressed the first respondent vide Lr. No.71610/CT3/98 dated 15.9.1999 for the issue of certificates to the petitioner's candidates who appeared in July 1998 as "Under Consideration" cases in response to which the first respondent has stated that the State Directors may take their own decision in the matter.

(d) The Director of Employment and Training, Chennai, in his communication dated 27.01.2000, has stated that the petitioner Institute can be considered as a special case and given affiliation from 1992, from which period the Departmental Inspection Report dated 10.06.1992 has been recommended for 4 units of Fitter Trade. In the said communication, he has further observed that the tool kit items sent in the annexure III of Departmental Inspection Report dated 10.06.1992 also shows that the petitioner Institute was having facilities for four units of Fitter Trade. In this background, the Director of Employment and Training, Chennai has requested the first respondent that the passed out Fitter trainees who appeared in July 1998 Trade Test (as Under Consideration) may be issued National Trade Certificates as a special case.

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12. Further, the learned counsel for the petitioner has relied on an unreported judgment dated 03.01.2007 passed by this Court in W.P.No.21113 of 2006, wherein under a similar circumstance, it was held as under:

> "9. Therefore, the following conclusions become inevitable, from the sequence of events narrated above, which are not in dispute:-
>
> (a) that the petitioner admitted students with the permission of the State Director, who is empowered to grant such permission;
>
> (b) that the students admitted against the additional units are entitled to Trade Certificates issued by SCVT; and
>
> (c) that affiliation is always granted by NCVT (first respondent), only post facto and hence neither the petitioner nor the students can be found fault with.
>
> 10. In view of the foregoing conclusions, the only objection taken by the first respondent for refusing to issue National Trade Certificates to the 1995-1997 batch of students, is illegal and the writ petition is liable to be allowed.
>
> 11. Accordingly the writ petition is allowed and the respondents are directed to issue National Trade Certificates for the 1995 batch of Trainees, in the trades of Electrician and Fitter, who took the examinations in July 1997 and the supplementary examinations thereafter, within a period of three months from the date of receipt or production of a copy of this order, subject to the students being found otherwise eligible for the grant of the Certificates. No costs. Consequently, connected miscellaneous petition is closed."

13. From a plain reading of the decision of this Court referred to above by which the respondents have been directed to issue National Trade Certificates to the petitioner's trainees, it is amply clear that the facts and circumstances set out therein are very much akin to those on hand.

14. As regards the reliance placed by the learned counsel for the first respondent on the judgments of the Kerala High Court, I am of the considered view that they fall under an altogether different

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footing for the reason that the procedure in the matter of grant of affiliation, conduct of examination and the issue of certificates in the course of Trade conducted by the first and second respondents was not dealt with therein and in that view of the matter, it can be conveniently be held that those may not be of any support to the contention of the counsel for the first respondent.

15. Apart from the above, as per the Training Manual for the ITIs and ITCs, the first respondent acts as the affiliating body and it conducts examination and issues certificates only through the second respondent who is described as the State Director. The question papers are despatched to the second respondent who conducts the examination and ultimately, the blank National Trade Certificates are also despatched by the first respondent to the second respondent who is empowered to issue those certificates after filling up the blanks. In regard to the above, Clause vii of the above-referred to Training Manual deserves reference and the same reads as under:

> "The State Director may seek permanent affiliation by forwarding the inspection report (Annexure III) to the Secretary, NCVT, New Delhi. The State Director need not wait for any instruction in this matter from the Secretary, NCVT. He may grant permission to the Management of the Institute to admit trainees in the trades/units which have been recommended for permanent affiliation by the Standing Committee. It should however be made clear that in case permanent affiliation is not granted, final trade test and certification would be the responsibility of respective SCVT."

The above clause makes it abundantly clear that even without waiting for the orders of affiliation, the State Director can permit the courses to be commenced.

16. Thus, as already stated, since the order dated 03.01.2007 passed by this Court in W.P. No.21113 of 2006 is squarely applicable to the facts of the case on hand, following the same, this petition is disposed of with the following direction:

> "The respondents shall issue National Trade Certificates for the 1995 and 1996 batch of students, who undertook their exams in July 1997 and July 1998 respectively, in the trade of Fitter, as per the petitioner's representation dated 08.11.2004, within a period of three months from the date of receipt or production of a copy of this order, subject to the students being found otherwise eligible for the grant of the Certificates."

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No costs. Consequently, connected W.P.M.P.No.4245 of 2006 is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Government of India,
   Directorate General of Employment & Training,
   Ministry of Labour,
   Sharam Shakti Bhavan,
   Rafi Marg, New Delhi 110 001.

2. The Commissioner,
   Employment & Training Department,
   Guindy, Chennai 600 032.

   + 1 CC To Mr. K.Balachandran, Advocate SR NO.72363

   + 1 CC To Mr. G.Thilagavathi, Advocate SR NO.72304

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